

Form 7500

**General Provisions
for Subcontracts
Section C**

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LOS ALAMOS

Los Alamos National Laboratory

Los Alamos, NM 87545

Form 7500, Section C

Section C Clauses Apply to Fixed-Price Subcontracts.

The clauses listed below apply to fixed-price type subcontracts. Clauses in this section appropriate to the pricing arrangement and the Subcontractor's business category shall be incorporated into subcontracts by specific citing of the clause number in the Schedule.

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C1, Changes, Research and Development

- (a) At any time, by written change order and without notice to the sureties, if any, the University may make changes within the general scope of the subcontract in any one or more of the following:
 - (1) Drawings, designs, or specifications;
 - (2) Method of shipment or packing; or
 - (3) Place of inspection, delivery, or acceptance.
- (b) If any such change causes an increase or decrease in the cost of an item or the time required for performing any part of the work under the subcontract, whether or not changed by the change order, the University shall make an equitable adjustment in (1) the subcontract price, the time of performance or both; and (2) other affected terms of the subcontract, and shall modify the subcontract accordingly.
- (c) The Subcontractor must submit any "proposal for adjustment" (hereafter referred to as "proposal") under this clause within 30 days from the date of receipt of the written change order. However, if the University decides that the facts justify the action, the University may receive and act upon a proposal submitted before final payment of the subcontract.
- (d) If the Subcontractor's proposal includes the cost of property made obsolete or excess by the change, the University shall have the right to prescribe the manner of the disposition of the property.
- (e) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Subcontractor from proceeding with the subcontract as changed.

C2, Changes, Services

- (a) At any time, by written change order and without notice to the sureties, if any, the University may make changes within the general scope of the subcontract in any one or more of the following:
 - (1) Description of services to be performed.
 - (2) Time of performance (i.e., hours of the day, days of the week, etc.)
 - (3) Place of performance of the services.
- (b) If any such change causes an increase or decrease in the cost of an item or the time required for performing any part of the work under the subcontract, whether or not changed by the change order, the University shall make an equitable adjustment in (1) the subcontract price, the time of performance or both; and (2) other affected terms of the subcontract, and shall modify the subcontract accordingly.
- (c) The Subcontractor must submit any "proposal for adjustment" (hereafter referred to as "proposal") under this clause within 30 days from the date of receipt of the written change order. However, if the University decides that the facts justify the action, the University may receive and act upon a proposal submitted before final payment of the subcontract.

- (d) If the Subcontractor's proposal includes the cost of property made obsolete or excess by the change, the University shall have the right to prescribe the manner of the disposition of the property.
- (e) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Subcontractor from proceeding with the subcontract as changed.

C3, Changes, Supplies and Services

- (a) At any time, by written change order and without notice to the sureties, if any, the University may make changes within the general scope of the subcontract in any one or more of the following:
 - (1) Description of services to be performed.
 - (2) Time of performance (i.e., hours of the day, days of the week, etc.)
 - (3) Place of performance of the services.
 - (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the University in accordance with the drawings, designs, or specifications.
 - (5) Method of shipment or packing of supplies.
 - (6) Place of delivery.
- (b) If any such change causes an increase or decrease in the cost of an item or the time required for performing any part of the work under the subcontract, whether or not changed by the change order, the University shall make an equitable adjustment in (1) the subcontract price, the time of performance or both; and (2) other affected terms of the subcontract, and shall modify the subcontract accordingly.
- (c) The Subcontractor must submit any "proposal for adjustment" (hereafter referred to as "proposal") under this clause within 30 days from the date of receipt of the written change order. However, if the University decides that the facts justify the action, the University may receive and act upon a proposal submitted before final payment of the subcontract.
- (d) If the Subcontractor's proposal includes the cost of property made obsolete or excess by the change, the University shall have the right to prescribe the manner of the disposition of the property.
- (e) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Subcontractor from proceeding with the subcontract as changed.

C4, Changes, Supplies

- (a) At any time, by written change order and without notice to the sureties, if any, the University may make changes within the general scope of the subcontract in any of the following:
 - (1) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the University in accordance with the drawings, designs, or specifications
 - (2) Method of shipment or packing.

- (3) Place of delivery.
- (b) If any such change causes an increase or decrease in the cost of an item or the time required for performing any part of the work under the subcontract, whether or not changed by the change order, the University shall make an equitable adjustment in (1) the subcontract price, the time of performance or both; and (2) other affected terms of the subcontract, and shall modify the subcontract accordingly.
- (c) The Subcontractor must submit any "proposal for adjustment" (hereafter referred to as "proposal") under this clause within 30 days from the date of receipt of the written change order. However, if the University decides that the facts justify the action, the University may receive and act upon a proposal submitted before final payment of the subcontract.
- (d) If the Subcontractor's proposal includes the cost of property made obsolete or excess by the change, the University shall have the right to prescribe the manner of the disposition of the property.
- (e) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Subcontractor from proceeding with the subcontract as changed.

C5, Default

- (a) (1) Subject to paragraphs (c) and (d) below, by written Notice of Default to the Subcontractor, the University may terminate the subcontract in whole or in part if the Subcontractor fails to
 - (i) Perform the work under the subcontract within the time specified in the subcontract or any extension;
 - (ii) Prosecute the work so as to endanger performance of the subcontract (but see subparagraph (a)(2) below); or
 - (iii) Perform any of the other provisions of the subcontract (but see subparagraph [a][2] below).
- (2) The University's right to terminate the subcontract under paragraphs (1)(ii) and (1)(iii) above may be exercised if the Subcontractor does not cure such failure within ten days (or more, if authorized in writing by the University) after receipt of the notice from the University specifying the failure.
- (b) If the University terminates the subcontract in whole or in part, it may acquire, under the terms and in the manner the University considers appropriate, work similar to the work terminated, and the Subcontractor will be liable to the University for any excess costs for the similar work. However, the Subcontractor shall continue the work not terminated.
- (c) Except for defaults of lower-tier subcontractors at any tier, the Subcontractor shall not be liable for any excess costs if the failure to perform the subcontract arises from causes beyond the control and without the fault or negligence of the Subcontractor. Examples of such causes include (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9)

unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of the Subcontractor.

- (d) If the failure to perform is caused by the default of a lower-tier subcontractor at any tier, and if the cause of the default is beyond the control of both the Subcontractor and lower-tier subcontractor and without the fault or negligence of either, the Subcontractor shall not be liable for any excess costs for failure to perform, unless the subcontracted goods or services were obtainable from other sources in sufficient time for the Subcontractor to meet the required delivery schedule or other performance requirements.
- (e) If the subcontract is terminated for default, the University may require the Subcontractor to transfer title to the Government and deliver to the University, as directed by the University, any (1) completed or partially completed work not previously delivered to and accepted by the University and (2) other property, including subcontract rights, specifically produced or acquired for the terminated portion of the subcontract. Upon direction of the University, the Subcontractor shall also protect and preserve property in its possession in which the University has an interest.
- (f) The University shall pay the subcontract price, if separately stated, for completed work it has accepted and the amount agreed upon by the Subcontractor and the University for (1) completed work for which no separate price is stated, (2) partially completed work, (3) other property described above that it accepts, and (4) the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The University may withhold from these amounts any sum that the University determines to be necessary to protect the University against loss from outstanding liens or claims of former lien holders.
- (g) If, after termination, it is determined that the Subcontractor was not in default or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the University.
- (h) The rights and remedies of the University in this clause are in addition to any other rights and remedies provided by law or under the subcontract.

C6, Federal, State, and Local Taxes

(a) Definitions.

"Contract date," as used in this clause, means the effective date of this subcontract or modification.

"All applicable federal, state, and local taxes and duties," as used in this article, means all taxes and duties, in effect on the contract date, that the taxing authority is imposing and collecting on the transactions or property covered by this subcontract.

"After-Imposed Federal Tax," as used in this article, means any new or increased Federal excise tax or duty, or tax that was exempted or excluded on the subcontract date but whose exemption was later revoked or reduced during the subcontract period, on the transactions or property covered by this subcontract that the Subcontractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date. It does not include social security tax or other employment taxes.

"After-Relieved Federal Tax," as used in this article, means any amount of Federal excise tax or duty, except social security or other employment taxes, that would otherwise have been payable on the transactions or property covered by this subcontract, but which the Subcontractor is not required to pay or bear, or for which the Subcontractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the subcontract date.

- (b) The subcontract price includes all applicable Federal, State, and local taxes and duties.
- (c) The subcontract price shall be increased by the amount of any after-imposed Federal tax, provided the Subcontractor warrants in writing that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the subcontract price, as a contingency reserve or otherwise.
- (d) The subcontract price shall be decreased by the amount of any after-relieved Federal tax.
- (e) The subcontract price shall be decreased by the amount of any Federal excise tax or duty, except social security or other employment taxes, that the Subcontractor is required to pay or bear, or does not obtain a refund of, through the Subcontractor's fault, negligence, or failure to follow instructions of the University.
- (f) No adjustment shall be made in the subcontract price under this article unless the amount of the adjustment exceeds \$250.
- (g) The Subcontractor shall promptly notify the University of all matters relating to any Federal excise tax or duty that reasonably may be expected to result in either an increase or decrease in the subcontract price and shall take appropriate actions as the University directs.
- (h) The University shall, without liability, furnish evidence appropriate to establish exemption from any Federal, State, or local tax when the Subcontractor requests such evidence and a reasonable basis exists to sustain the exemption.

C7, Inspection of Research and Development

- (a) The Subcontractor shall provide and maintain an inspection system covering the work under the subcontract and that is acceptable to the University. Complete records of all inspection work performed by the Subcontractor shall be maintained and made available to the University during subcontract performance and for as long afterwards as the subcontract requires.
- (b) The University has the right to inspect and test all work called for by the subcontract to the extent practicable at all places and times, including the period of performance, and in any event before acceptance. The University may also inspect the premises of the Subcontractor or any lower-tier subcontractor engaged in subcontract performance. The University shall perform inspections and tests in a manner that will not unduly delay the work.
- (c) If the University performs any inspection or test on the premises of the Subcontractor or a lower-tier subcontractor, the Subcontractor shall furnish and shall require lower-tier subcontractors to furnish without additional charge all reasonable facilities

and assistance for the safe and convenient performance of these duties. Except as otherwise provided in the subcontract, the University shall bear the expense of University inspections or tests made at other than the Subcontractor's or lower-tier subcontractor's premises.

- (d) The University shall accept or reject the work as promptly as practicable after delivery, unless otherwise specified in the subcontract. University failure to inspect and accept or reject the work shall not relieve the Subcontractor from responsibility nor impose liability on the University for nonconforming work. Work is nonconforming when it is defective in material or workmanship or does not otherwise conform with subcontract requirements.
- (e) The University has the right to reject nonconforming work. If the Subcontractor fails or is unable to correct or to replace nonconforming work within the delivery schedule (or such later time that the University may authorize), the University may accept the work and make an equitable price reduction. Failure to agree on a price reduction shall be a dispute under the Disputes clause.
- (f) Inspection and test by the University does not relieve the Subcontractor from responsibility for defects or other failures to meet the subcontract requirements that may be discovered before acceptance. Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or as otherwise specified in the subcontract. If acceptance is not conclusive for any of these causes and in addition to any other rights and remedies provided by law or under other provisions of the subcontract, the University shall have the right to require the Subcontractor (1) at no increase in subcontract price, to correct or replace the defective or nonconforming goods at the original point of delivery or at the Subcontractor's facility at the University's election, and in accordance with a reasonable delivery schedule that may be agreed upon between the Subcontractor and the University, provided the University may require a reduction in subcontract price if the Subcontractor fails to meet such delivery schedule; or (2) within a reasonable time after the Subcontractor's receipt of notice of defects or nonconformance, to repay such portion of the subcontract price that is equitable under the circumstances if the University elects not to require correction or replacement. When goods are returned to the Subcontractor, the Subcontractor shall bear transportation costs from the original point of delivery to the Subcontractor's facility and return to the original point of delivery when that point is not the Subcontractor's facility.

C8, Inspection of Services

- (a) **Definition.** "Services," as used in this clause, includes services performed, workmanship, and material furnished or utilized in the performance of services.
- (b) The Subcontractor shall provide and maintain an inspection system acceptable to the University covering the services under this subcontract. Complete records of all inspection work performed by the Subcontractor shall be maintained and made available to the University during subcontract performance and for as long afterwards as the subcontract requires.
- (c) The University has the right to inspect and test all services called for by the subcontract, to the extent practicable at all times and places during the term of the subcontract. The University shall perform inspections and tests in a manner that will not unduly delay the work.

- (d) If the University performs inspections or tests on the premises of the Subcontractor or lower-tier subcontractor, the Subcontractor shall furnish, and shall require lower-tier subcontractors to furnish, without additional charge, all reasonable facilities and assistance for the safe and convenient performance of these duties.
- (e) If any of the services do not conform with subcontract requirements, the University may require the Subcontractor to perform the services again in conformity with subcontract requirements, at no increase in subcontract amount. When the defects in services cannot be corrected by reperformance, the Subcontractor may (1) require the Subcontractor to take necessary action to ensure that future performance conforms to subcontract requirements and (2) reduce the subcontract price to reflect the reduced value of the services performed.
- (f) If the Subcontractor fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with subcontract requirements, the University may (1) by subcontract or otherwise, perform the services and charge to the Subcontractor any cost incurred by the University that is directly related to the performance of such service or (2) terminate the subcontract for default.

C9, Inspection of Supplies

- (a) **Definition.** "Supplies," as used in this clause, includes but is not limited to raw materials, components, intermediate assemblies, end products, and lots of supplies.
- (b) The Subcontractor shall provide and maintain an inspection system acceptable to the University covering supplies under this subcontract and shall tender to the University for acceptance only supplies that have been inspected in accordance with the inspection system and have been found by the Subcontractor to be in conformity with subcontract requirements. As part of the system, the Subcontractor shall prepare records evidencing all inspections made under the system and the outcome. These records shall be kept complete and made available to the University during subcontract performance and for as long afterwards as the subcontract requires. The University may perform reviews and evaluations as reasonably necessary to ascertain compliance with this paragraph. These reviews and evaluations shall be conducted in a manner that will not unduly delay the subcontract work. The right to review, whether exercised or not, does not relieve the Subcontractor of the obligations under the subcontract.
- (c) The University has the right to inspect and test all supplies called for by the subcontract, to the extent practicable, at all places and times, including the period of manufacture, and in any event before acceptance. The University assumes no contractual obligation to perform any inspection and test for the benefit of the Subcontractor unless specifically set forth elsewhere in the subcontract.
- (d) If the University performs inspection or test on the premises of the Subcontractor or a lower-tier subcontractor, the Subcontractor shall furnish, and shall require lower-tier subcontractors to furnish, without additional charge, all reasonable facilities and assistance for the safe and convenient performance of these duties. Except as otherwise provided in the subcontract, the University shall bear the expense of University inspections or tests made at other than the Subcontractor's or lower-tier subcontractor's premises; *provided*, that in case of rejection, the University shall not be liable for any reduction in the value of inspection or test samples.

- (e)
 - (1) When supplies are not ready at the time specified by the Subcontractor for inspection or test, the University may charge to the Subcontractor the additional cost of inspection or test.
 - (2) The University may also charge the Subcontractor for any additional cost of inspection or test when prior rejection makes reinspection or retest necessary.
- (f) The University has the right either to reject or to require correction of nonconforming supplies. Supplies are nonconforming when they are defective in material or workmanship or are otherwise not in conformity with subcontract requirements. The University may reject nonconforming supplies with or without disposition instructions.
- (g) The Subcontractor shall remove supplies rejected or required to be corrected. However, the University may require or permit correction in place, promptly after notice, by and at the expense of the Subcontractor. The Subcontractor shall not tender for acceptance corrected or rejected supplies without disclosing the former rejection or requirement for correction, and, when required, shall disclose the corrective action taken.
- (h) If the Subcontractor fails to promptly remove, replace, or correct rejected supplies that are required to be removed or to be replaced or corrected, the University may either
 - (1) by subcontract or otherwise, remove, replace, or correct the supplies and charge the cost to the Subcontractor or
 - (2) terminate the subcontract for default. Unless the Subcontractor corrects or replaces the supplies within the delivery schedule, the University may require their delivery and make an equitable price reduction. Failure to agree to a price reduction shall be a dispute.
- (i)
 - (1) If this subcontract provides for the performance of University quality assurance at source, and if requested by the University, the Subcontractor shall furnish advance notification of the time (i) when Subcontractor inspection or tests will be performed in accordance with the terms and conditions of the subcontract and (ii) when the supplies will be ready for University inspection.
 - (2) The University's request shall specify the period and method of the advance notification and the University representative to whom it shall be furnished. Requests shall not require more than 7 workdays of advance notification.
- (j) The Government shall accept or reject supplies as promptly as practicable after delivery, unless otherwise provided in the subcontract. University failure to inspect and accept or reject the supplies shall not relieve the Subcontractor from responsibility, nor impose liability on the University for nonconforming supplies.
- (k) Inspections and tests by the University do not relieve the Subcontractor of responsibility for defects or other failures to meet subcontract requirements discovered before acceptance. Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or as otherwise provided in the subcontract.
- (l) If acceptance is not conclusive for any of the reasons in paragraph (k) hereof, the University, in addition to any other rights and remedies provided by law, or under other provisions of the subcontract, shall have the right to require the Subcontractor

(1) at no increase in subcontract price, to correct or replace the defective or nonconforming supplies at the original point of delivery or at the Subcontractor's plant at the University's election, and in accordance with a reasonable delivery schedule as may be agreed upon between the Subcontractor and the University; *provided*, that the University may require a reduction in subcontract price if the Subcontractor fails to meet such delivery schedule, or (2) within a reasonable time after receipt by the Subcontractor of notice of defects or nonconformance, to repay such portion of the subcontract as is equitable under the circumstances if the University elects not to require correction or replacement. When supplies are returned to the Subcontractor, the Subcontractor shall bear the transportation cost from the original point of delivery to the Subcontractor's plant and return to the original point when that point is not the Subcontractor's plant. If the Subcontractor fails to perform or act as required in (1) or (2) above and does not cure such failure within a period of 10 days (or such longer period as the University may authorize in writing) after receipt of notice from the University specifying such failure, the University shall have the right by subcontract or otherwise to replace or correct such supplies and charge to the Subcontractor the cost occasioned the University thereby.

C10, Limitation of University's Obligation

- (a) Of the total price of the items listed in Section B of the schedule, the sum listed in Section F of the schedule is presently available for payment and allotted to the subcontract. It is anticipated that from time to time additional funds will be allotted to the subcontract until the total price of these items is allotted.
- (b) The Subcontractor agrees to perform or have performed work on the items up to the point at which, in the event of termination of the subcontract pursuant to the Termination for Convenience clause of the subcontract, the total amount payable by the University (including amounts payable in respect of lower-tier subcontracts and settlement costs) pursuant to paragraph (a) of the clause would, in the exercise of reasonable judgment by the Subcontractor, approximate the total amount of the time allotted to the subcontract. The Subcontractor will not be obligated to continue performance of the work beyond that point. The University will not be obligated in any event to pay or reimburse the Subcontractor in excess of the amount from time to time allotted to the subcontract, regardless of anything to the contrary in the Termination for Convenience clause of the subcontract.
- (c) It is contemplated that the funds presently allotted to the subcontract will cover the work to be performed, as limited by the provisions of (b) above, until the date specified in Section B of the subcontract. If funds allotted are considered by the Subcontractor to be inadequate to cover the work to be performed until the above date, the Subcontractor will notify the University in writing when, within the next 30 days, the work will reach a point at which, in the event of termination of the subcontract pursuant to the Termination for Convenience clause of the subcontract, the total amount payable by the University (including amount payable in respect of lower-tier subcontracts and settlement costs), pursuant to paragraph (e) of this clause, will approximate 85 percent of the total amount then allotted to the subcontract. The notice will state
 - (i) the estimated date when that point will be reached, and
 - (ii) the estimated amount of additional funds required to continue performance to the above date.

After such latter notification, the Subcontractor shall advise the University in writing as to the estimated amount of additional funds which will be required for the timely performance of the subcontract for a further period as may be specified in the subcontract or otherwise agreed to by the parties. If additional funds are not allotted by the date above written, the University will, upon written request of the Subcontractor, terminate the subcontract on that date or the date set forth in the request, whichever is later, pursuant to the provisions of the Termination for Convenience clause of the subcontract.

- (d) When additional funds are allotted from time to time for continued performance of the work under the subcontract, the parties will agree as to the applicable period of subcontract performance that will be covered by the funds. The provisions of (b) and (c) above will apply in like manner to the additional allotted funds, and the subcontract will be amended accordingly.
- (e) If the Subcontractor incurs additional costs or is delayed in the performance of the work under the subcontract solely by reason of failure of the University to allot additional funds in amounts sufficient for timely performance of the subcontract, and if additional funds are allotted, an equitable adjustment will be made in the price or prices (including appropriate target, billing, and ceiling prices where applicable) of the items or in the time of delivery or both. Failure to agree to any such equitable adjustment hereunder will be a dispute within the meaning of the Disputes clause.
- (f) The University may at any time before termination and, with the consent of the Subcontractor after notice of termination, allot additional funds for the subcontract.
- (g) The provisions of this clause with respect to termination will not be deemed to limit the rights of the University under the Default clause. The provisions of this clause are limited to the work on and obligation of funds for the items set forth in (a) above. This clause will become inoperative upon the obligation of funds for the total price of the work except for rights and obligations then existing under this clause.
- (h) Nothing in the clause affects the right of the University to terminate this subcontract pursuant to the Termination for Convenience clause.

C11, Limitation on Withholding of Payments

- (a) If more than one clause or schedule provision of the subcontract authorizes the temporary withholding of amounts otherwise payable to the Subcontractor for goods delivered or services performed, the total of the amounts withheld at any one time shall not exceed the greatest amount that may be withheld under any one clause or schedule provision at that time, provided that this limitation shall not apply to
 - (1) Withholdings pursuant to any clause relating to wages or hours of employees;
 - (2) Withholdings not specifically provided for by the subcontract;
 - (3) The recovery of overpayments; and
 - (4) Any other withholding mandated by law or regulation.

C12, Lower-Tier Subcontracts

- (a) This clause applies to lower-tier subcontracts resulting from unpriced modifications to the subcontract.
- (b) *"Lower-tier subcontract"* as used in this clause includes but is not limited to purchase orders and changes and modifications to purchase orders. The Subcontractor shall notify the University reasonably in advance of entering into any lower-tier subcontract if the Subcontractor does not have a Government approved purchasing system and if the lower-tier subcontract-
 - (1) Is proposed to exceed \$100,000; or
 - (2) Is one of a number of lower-tier subcontracts with a single lower-tier subcontractor under the subcontract for the same or related goods or services that in the aggregate are expected to exceed \$100,000.
- (c) The advance notification required by paragraph (b) above shall include
 - (1) A description of the supplies or services to be subcontracted;
 - (2) Identification of the type of subcontract to be used;
 - (3) Identification of the proposed lower-tier subcontractor and an explanation of why and how the proposed lower-tier subcontractor was selected, including the competition obtained;
 - (4) The proposed price of the lower-tier subcontract and the Subcontractor's cost or price analysis;
 - (5) The lower-tier subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other provisions of the subcontract;
 - (6) The lower-tier subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of the subcontract; and
 - (7) A negotiation memorandum reflecting-
 - (i) The principal elements concerning price negotiations of the lower-tier subcontract;
 - (ii) The most significant considerations controlling establishment of initial or revised prices;
 - (iii) The reason cost or pricing data were or were not required;
 - (iv) The extent, if any, to which the Subcontractor did not rely on the lower-tier subcontractor's cost or pricing data in determining the price objective and in negotiating the final price;
 - (v) The extent, if any, to which it was recognized in the negotiation that the lower-tier subcontractor's cost or pricing data were not accurate, complete, or current; the action taken by the Subcontractor and lower-

tier subcontractor; and the effect of any such defective data on the total price negotiated;

- (vi) The reasons for any significant difference between the Subcontractor's price objective and the price negotiated; and
 - (vii) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.
- (d) The Subcontractor shall obtain the University's written consent before placing any lower-tier subcontract for which advance notification is required under paragraph (b) above. However, the University may ratify in writing any such lower-tier subcontract. Ratification shall constitute the consent of the University.
 - (e) Even if the Subcontractor's purchasing system has been approved, the Subcontractor shall obtain the University's written consent before placing lower-tier subcontracts that have been selected for special surveillance and are so identified in the schedule of the subcontract.
 - (f) Unless the consent or approval specifically provides otherwise, neither consent by the University to any lower-tier subcontract nor approval of the Subcontractor's purchasing system shall constitute a determination (1) of the acceptability of any lower-tier subcontract terms or conditions, (2) of the acceptability of any lower-tier subcontract price or of any amount paid under any lower-tier subcontract, or (3) to relieve the Subcontractor of any responsibility for performing the subcontract.
 - (g) No lower-tier subcontract placed under the subcontract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement lower-tier subcontracts shall not exceed the fee limitations in Subsection 15.903(d) of the FAR.
 - (h) The University and the Government reserve the right to review the Subcontractor's purchasing system as set forth in FAR Subpart 44.3. and DEAR 944.3

C13, Additional Paragraph (i) to Clause C12, Lower-Tier Subcontracts

- (i) Paragraphs (b) and (c) of Clause C12 do not apply to the lower-tier subcontracts that were evaluated during negotiations and are listed in the schedule.

C14, Payment Under Fixed-Price Research and Development Subcontracts

The University shall pay the Subcontractor the prices stipulated in the subcontract for work delivered or rendered and accepted, less any deductions provided in the subcontract, after submission of proper invoices or vouchers. Unless otherwise specified, payment shall be made after acceptance of any portion of the work delivered or rendered for which a price is separately stated in the subcontract.

C15, Payments

The University shall pay the Subcontractor, upon submission of proper invoices or vouchers, the prices stipulated in the subcontract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in the subcontract. Unless otherwise specified in the subcontract, payment shall be made on partial deliveries accepted by the University if-

- (a) The amount due on the deliveries warrants it; or
- (b) The Subcontractor requests it and the amount due on the deliveries is at least \$1,000 or 50 percent of the total subcontract price.

C16, Property

(Incorporated by Reference) (FAR 52.245-2 Basic Clause)

C17, Substitute Paragraph (g) to Clause C16, Property, for Supplies and/or Services

(Incorporated by Reference)(FAR 52.245-2, Alternate I)

C18, Refund of Royalties

- (a) The subcontract price includes certain amounts for royalties payable by the Subcontractor or lower-tier subcontractors or both, which amounts have been reported to the University.
- (b) The term "*royalties*," as used in this clause refers to any costs or charges in the nature of royalties, license fees, patent or license amortization costs, or the like, for the use of or for rights in patents and patent applications in connection with performing the subcontract or any lower-tier subcontract thereunder.
- (c) The Subcontractor shall furnish to the University, before final payment under the subcontract, a statement of royalties paid or required to be paid in connection with performing the subcontract or lower-tier subcontracts thereunder together with reasons.
- (d) The Subcontractor will be compensated for royalties reported under paragraph (c) of this clause, only to the extent that such royalties were included in the subcontract price and are determined by the University to be properly chargeable to the University and allocable to the subcontract. To the extent that any royalties that are included in the subcontract price are not in fact paid by the Subcontractor or are determined by the University not to be properly chargeable to the University and allocable to the subcontract, the subcontract price shall be reduced. Repayment or credit to the University shall be made as the University directs.
- (e) If, at any time within 3 years after final payment under the subcontract, the Subcontractor for any reason is relieved in whole or in part from the payment of the royalties included in the final subcontract price as adjusted pursuant to paragraph (d) of this clause, the Subcontractor shall promptly notify the University of that fact and shall reimburse the University in a corresponding amount.

- (f) The substance of this clause, including this paragraph (f), shall be included in any lower-tier subcontract in which the amount of royalties reported during negotiation of the lower-tier subcontract exceeds \$250.

C19, Stop-Work Order

- (a) The University may, at any time, by written order to the Subcontractor, require the Subcontractor to stop all or any part of the work called for by the subcontract for a period of 90 days after the stop-work order is delivered to the Subcontractor, and for any further period to which the parties may agree. The stop-work order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the stop-work order, the Subcontractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the stop-work order during the period of work stoppage. Within a period of 90 days after a stop-work order is delivered to the Subcontractor or within any extension of that period to which the parties shall have agreed, the University shall either
 - (1) Cancel the stop-work order or
 - (2) Terminate the work covered by the stop-work order as provided in the Default or the Termination for Convenience clause of the subcontract.
- (b) If a stop-work order issued under this clause is canceled or the period of the stop-work order or any extension thereof expires, the Subcontractor shall resume work. The University shall make an equitable adjustment in the delivery schedule or subcontract price or both and the subcontract shall be modified, in writing, accordingly, if
 - (1) The stop-work order results in an increase in the time required for or in the Subcontractor's cost properly allocable to the performance of any part of the subcontract; and
 - (2) The Subcontractor asserts a claim for the adjustment within 30 days after the end of the period of work stoppage, provided that if the University decides the facts justify the action, the University may receive and act upon the claim asserted at any time before final payment under the subcontract.
- (c) If a stop-work order is not canceled and if the work covered by the stop-work order is terminated for convenience, the University shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.
- (d) If a stop-work order is not canceled and the work covered by the stop-work order is terminated for default, the University shall allow, by equitable adjustment or other means, reasonable costs resulting from the stop-work order.

C20, Taxes - Foreign Fixed-Price Subcontracts

- (a) To the extent that the subcontract provides for furnishing goods or for performing services outside the United States, its possessions, and Puerto Rico, this clause applies instead of any Federal, State, and local taxes clause of the subcontract.

(b) **Definitions.**

"Subcontract date," as used in this clause means the date set for bid opening or, if this is a negotiated subcontract or a modification, the effective date of the subcontract or modification.

"Country concerned," as used in this clause means any country, other than the United States, its possessions, and Puerto Rico, in which expenditures under the subcontract are made.

"Tax," and "taxes," as used in this clause include fees and charges for doing business that are levied by the government of the country concerned or by its political subdivisions.

"All applicable taxes and duties," as used in this clause means all taxes and duties, in effect on the date of the subcontract, that the taxing authority is imposing and collecting on the transactions or property covered by the subcontract pursuant to written ruling or regulation.

"After-imposed tax," as used in this clause means any new or increased tax or duty, or any tax, other than excepted tax, that was exempted or excluded on the subcontract date but whose exemption was later revoked or reduced during the subcontract period on the transactions or property covered by the subcontract and that the Subcontractor must pay or bear because of legislative, judicial, or administrative action taking effect after the subcontract date.

"After-relieved tax," as used in this clause means any amount of tax or duty, other than an excepted tax, that would otherwise have been payable on the transactions or property covered by the subcontract but which the Subcontractor is not required to pay or bear or for which the Subcontractor obtains a refund because of legislative, judicial, or administrative action taking effect after the subcontract date.

"Excepted tax," as used in this clause means social security or other employment taxes, net income and franchise taxes, excess profits taxes, capital stock taxes, transportation taxes, unemployment compensation taxes, and property taxes. "Excepted tax" does not include gross income taxes levied on or measured by sales or receipts from sales, property taxes assessed on completed goods covered by the subcontract, or any tax assessed on the Subcontractor's possession of, interest in, or use of property, title to which vests in the U.S. Government.

- (c) Unless otherwise provided in the subcontract, the subcontract price includes all applicable taxes and duties, except taxes and duties that the Government of the United States and the government of the country concerned have agreed shall not apply to expenditures in such country by or on behalf of the United States Government.
- (d) The subcontract price shall be increased by the amount of any after-imposed tax or of any tax or duty specifically excluded from the subcontract price by a provision of the subcontract that the Subcontractor must pay or bear, including any interest or penalty, if the Subcontractor states in writing that the subcontract price does not include any contingency for such tax and if liability for such tax, interest, or penalty was not incurred through the Subcontractor's fault, negligence, or failure to follow instructions of the University or the United States Government or to comply with the provisions of paragraph (i) below.

- (e) The subcontract price shall be decreased by the amount of any after-relieved tax, including any interest or penalty. The University shall be entitled to interest received by the Subcontractor incident to a refund of taxes to the extent that such interest was earned after the Subcontractor was paid by the University for such taxes. The University shall be entitled to repayment of any penalty refunded to the Subcontractor to the extent that the penalty was paid by the University.
- (f) The subcontract price shall be decreased by the amount of any tax or duty, other than an excepted tax, that was included in the subcontract and that the Subcontractor must pay or bear or does not obtain a refund of through the Subcontractor's fault, negligence, or failure to follow instructions of the University or the United States Government or to comply with the provisions of paragraph (i) below.
- (g) No adjustment shall be made in the subcontract price under this clause unless the amount of the adjustment exceeds \$100.
- (h) If the Subcontractor obtains a reduction in tax liability under the United States Internal Revenue Code (Title 26, U.S.C.) because of the payment of any tax or duty that either was included in the subcontract price or was the basis of an increase in the subcontract price, the amount of the reduction shall be paid or credited to the University as the University directs.
- (i) The Subcontractor shall take all reasonable action to obtain exemption from or refund of any taxes or duties, including interest or penalty, from which the United States Government, the University, the Subcontractor, any lower-tier subcontractor, or the transactions or property covered by the subcontract are exempt under the laws of the country concerned or its political subdivisions or that the governments of the United States and of the country concerned have agreed shall not apply to expenditures in such country by or on behalf of the United States Government.
- (j) The Subcontractor shall promptly notify the University of all matters relating to taxes or duties that reasonably may be expected to result in either an increase or decrease in the subcontract price and shall take appropriate action as the University directs. At the direction of the University, the subcontract price shall be equitably adjusted to cover the costs of action taken by the Subcontractor, including any interest, penalty, and reasonable attorneys' fees.

C21, Termination for Convenience

- (a) The University may terminate performance of work under the subcontract in whole or, from time to time, in part if the University determines that a termination is in the Government's interest. The University shall terminate by delivering to the Subcontractor a Notice of Termination specifying the extent of termination and the effective date.
- (b) After receipt of a Notice of Termination, and except as directed by the University, the Subcontractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:
 - (1) Stop work as specified in the notice.
 - (2) Place no further lower-tier subcontracts or orders (referred to as lower-tier subcontracts in this clause) for goods, services, or facilities, except as necessary to complete the continued portion of the subcontract.

- (3) Terminate all lower-tier subcontracts to the extent they relate to the work terminated.
 - (4) Assign to the University, as directed by the University, all right, title, and interest of the Subcontractor under the lower-tier subcontracts terminated, in which case the University or the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
 - (5) With approval or ratification to the extent required by the University, settle all outstanding liabilities and termination settlement proposals arising from the termination of lower-tier subcontracts; the approval or ratification will be final for purposes of this clause.
 - (6) As directed by the University, transfer title to the Government and deliver to the University (i) the fabricated or unfabricated parts, work in process, completed work, and other goods produced or acquired for the work terminated, and (ii) the completed or partially completed plans, drawings, information, and other property that, if the subcontract had been completed, would be required to be furnished to the University.
 - (7) Complete performance of the work not terminated.
 - (8) Take any action that may be necessary, or that the University may direct, for the protection and preservation of the property related to the subcontract that is in the possession of the Subcontractor and in which the University or the Government has or may acquire an interest.
 - (9) Use its best efforts to sell, as directed or authorized by the University, any property of the types referred to in subparagraph (6) above, provided, however, that the Subcontractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by and at prices approved by the University. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the University under the subcontract, credited to the price or cost of the work, or paid in any other manner directed by the University.
- (c) After expiration of the "plant clearance period" (see FAR Subpart 45.6) the Subcontractor may submit to the University a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the University. The Subcontractor may request the University to remove those items or enter into an agreement for their storage. Within a reasonable time, the University, on behalf of the Government, will accept title to those items and remove them or enter into a storage agreement. The University may verify the list upon removal of the items, or if stored, within 90 days from submission of the list, and shall correct the list, as necessary, before final settlement.
- (d) After termination, the Subcontractor shall submit a final termination settlement proposal to the University in the form and with certification prescribed by the University. The Subcontractor shall submit the proposal promptly, but no later than one year from the effective date of termination, unless extended in writing by the University upon written request of the Subcontractor within this one-year period. However, if the University determines that the facts justify the action, a termination settlement proposal may be received and acted on after one year or any extension. If the Subcontractor fails to submit the proposal within the time allowed, the University

may determine, on the basis of information available, the amount, if any, due the Subcontractor because of the termination and shall pay the amount determined.

- (e) Subject to paragraph (d) above, the Subcontractor and the University may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (e) or paragraph (f) below, exclusive of costs shown in subparagraph (f)(3) below, may not exceed the total subcontract price as reduced by (1) the amount of payments previously made and (2) the subcontract price of work not terminated. The subcontract shall be amended and the Subcontractor paid the agreed amount. Paragraph (f) below shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.
- (f) If the Subcontractor and the University fail to agree on the whole amount to be paid because of the termination of work, the University shall pay the Subcontractor the amounts determined by the University as follows, but without duplication of any amounts agreed on under paragraph (e) above:
 - (1) The subcontract price for completed goods or services accepted by the University (or sold or acquired under subparagraph [(b)][(9)] above) not previously paid for, adjusted for any saving of freight and other charges.
 - (2) The total of
 - (i) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to goods or services paid or to be paid under subparagraph (f)(1) above;
 - (ii) The cost of settling and paying termination settlement proposals under terminated lower-tier subcontracts that are properly chargeable to the terminated portion of the subcontract if not included in subparagraph (i) above; and
 - (iii) A sum, as profit on subparagraph (i) above, determined by the University under Section 49.202 of the FAR to be fair and reasonable; however, if it appears that the Subcontractor would have sustained a loss on the entire subcontract had it been completed, the University shall allow no profit under the subparagraph (iii) and shall reduce the settlement to reflect the indicated rate of loss.
 - (3) The reasonable costs of settlement of the work terminated, including
 - (i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
 - (ii) The termination and settlement of lower-tier subcontracts (excluding the amounts of such settlements); and
 - (iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of termination inventory.
- (g) Except for normal spoilage, and except to the extent that the University or the Government expressly assumed the risk of loss, the University shall exclude from the

amounts payable to the Subcontractor under paragraph (f) above the fair value, as determined by the University, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the University or to a purchaser.

- (h) The costs principles and procedures of Part 31 of the FAR shall govern all costs claimed, agreed to, or determined under this clause.
- (i) The Subcontractor shall have the right of appeal, under the Disputes clause, from any determination made by the University under paragraph (d), (f), or (k) except that if the Subcontractor failed to submit the termination settlement proposal within the time provided in paragraph (d) or (k), and failed to request a time extension, there is no right of appeal. If the University has made a determination of the amount due under paragraph (d), (f), or (k), the University shall pay the Subcontractor (1) the amount determined by the University if there is no right of appeal or if no timely appeal has been taken, or (2) the amount finally determined on an appeal.
- (j) In arriving at the amount due the Subcontractor under this clause, there shall be deducted
 - (1) All unliquidated payments to the Subcontractor under the terminated portion of the subcontract;
 - (2) Any claim that the University has against the Subcontractor under the subcontract; and
 - (3) The agreed price for or the proceeds of sale of goods or other things acquired by the Subcontractor or sold under the provisions of this clause and not recovered by or credited to the University.
- (k) If the termination is partial, the Subcontractor may file a proposal with the University for an equitable adjustment of the price(s) of the continued portion of the subcontract. The University shall make any equitable adjustment agreed upon. Any proposal by the Subcontractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by the University.
- (l)
 - (1) Under the terms and conditions it prescribes, the University may make partial payments and payments against costs incurred by the Subcontractor for the terminated portion of the subcontract if the University believes the total of these payments will not exceed the amount to which the Subcontractor will be entitled.
 - (2) If the total payments exceed the amount finally determined to be due, the Subcontractor shall repay the excess to the University upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215 (b)(2). Interest shall be computed for the period from the date the excess payment is received by the Subcontractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Subcontractor's termination settlement proposal because of retention or other disposition of termination inventory until ten days after the date of the retention or disposition or a later date determined by the University because of the circumstances.
- (m) Unless otherwise provided in the subcontract or by statute, the Subcontractor shall maintain all records and documents relating to the terminated portion of the subcontract for three years after final settlement. This includes all books and other

evidence bearing on the Subcontractor's costs and expenses under the subcontract. The Subcontractor shall make these records and documents available to the University or the Government at the Subcontractor's office at all reasonable times and without any direct charge. If approved by the University, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.